REMARKS

Claims 1-10 are pending in the present application.

Claim 8 is allowed.

Claims 1, 4, 5, 9 and 10 are rejected.

Claims 2, 3, 6 and 7 are objected to.

Claims 1 and 5 have been amended. Reconsideration of the claims is respectfully requested.

35 U.S.C. § 102 (Anticipation)

Claims 1, 5, and 10 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 1,347,179 to Schnitzspahn ("*Schnitzspahn*"). This rejection is respectfully traversed.

A prior art reference anticipates the claimed invention under 35 U.S.C. §102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

In the 6/12/2008 Office Action, the Examiner suggests that claiming two vertical positions of the funnel, one in which it can slide relative to the receptacles and another lower position in which it is positively engaged with a receptacle and therefore constrained may likely overcome this rejection. Applicants thank the Examiner for this suggestion, and have amended Claim 1. Claim 1 recites a

funnel capable of being disposed in an upper vertical position and a lower vertical position, wherein the upper vertical position allows the funnel to slide horizontally along the series of tubular receptacles, and the lower vertical position restricts the funnel from sliding along the series of tubular receptacles. As the Examiner suggested, such a feature is not found in *Schnitzspahn*.

For these reasons, *Schnitzspahn* fails to anticipate the Applicants' invention as recited in Claim 1 (and its dependent claims). Accordingly, the Applicants respectfully request withdrawal of the § 102 rejection and full allowance of Claims 1, 5, and 10.

35 U.S.C. § 103 (Obviousness)

Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schnitzspahn* in view of U.S. Patent Application Publication No. 2004/0102148 to Perkitny et al. ("*Perkitny*"). Claim 9 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Schnitzspahn* in view of U.S. Patent Application Publication No. 2002/0043958 to Yamaguchi et al. ("*Yamaguchi*"). These rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781,

783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

Claims 4 and 9 depend from Claim 1. As shown above, Claim 1 is patentable. As a result, Claims 4 and 9 are patentable at a minimum due to their dependence from an allowable base claim.

Accordingly, the Applicants respectfully request withdrawal of the § 103 rejection and full allowance of Claims 4 and 9.

Allowable Subject Matter

The Examiner objected to Claims 2, 3, 6, and 7 as being dependent upon a rejected base claim, but suggested that they would be allowable if they were rewritten in independent form (including all the elements of the base claim and any intervening claims). The Applicants thank the Examiner for this suggestion but elect not to rewrite Claims 2, 3, 6, and 7 at this time.

The Applicants thank the Examiner for the indication that Claim 8 is allowable. As no amendments have been made herein to Claim 8, the Applicants submit that Claim 8 remains in condition for allowance.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at ***wmunck@munckcarter.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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